



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155, 14-D12
Seattle, WA 98101-3144

REGIONAL
ADMINISTRATOR'S
DIVISION

November 10, 2022

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Dear Ms. Bose:

The U.S. Environmental Protection Agency has reviewed the Federal Energy Regulatory Commission's September 13th, 2022, Federal Notice of the Draft Environmental Analysis for the County Line Road Hydroelectric Project (FERC Docket Number P-14513-003; EPA Project Number 22-0057-FERC). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The proposed County Line Hydroelectric Project includes constructing and operating a new hydroelectric facility along the Snake River in Jefferson and Bonneville Counties to generate a combined 2.49 MW of energy. The Project proposes using and altering existing irrigation diversion dams and canals along around 3.5 miles of the Snake River, and the construction of powerhouse facilities along each of the canals.

EPA has identified environmental concerns in the NEPA analysis and is providing the attached detailed comments and recommendations in response. EPA is particularly concerned with the project impacts to instream flow throughout the year and the impacts that reduced minimum flows may have on wildlife. EPA recommends the NEPA analysis consider: current and reasonably foreseeable future conditions; potential cumulative and synergistic impacts to human health and the environment; climate change and resiliency; construction related air quality impacts; and mechanisms of financial assurance to ensure the long-term success of the project. EPA's more detailed comments are enclosed.

If you have any questions about our comments, please contact Scott Schlieff at (206) 553-4032 or Schlieff.Scott@epa.gov, or contact me at (206) 553-1774 or at Chu.Rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
County Line Road Hydroelectric Project
Jefferson and Bonneville Counties,
November 2022**

Water Resource Impacts

The DEA preferred alternative calls for a minimum flow of 2,500 cfs in September and October and 1,500 cfs from November through April. EPA recommends FERC apply a minimum flow of 2,800 cfs instead of 2,500 cfs.

The United States Fish and Wildlife Service (USFWS) stated in their comment on the letter on the proposed project, dated October 19, 2022, to maintain a minimum flow of 2,800 cubic feet per second (cfs) year-round (particularly in the winter months) in the bypass reach to support the existence of suitable habitat for Yellow-billed Cuckoo within the action area. The recommended minimum flow of 2,800 cfs protects riparian habitat from adverse impacts to riparian rooting areas caused by chronic low winter flows for the federally listed (threatened) species, Yellow-billed Cuckoo.

Additionally, the preferred alternative's minimum flow conditions are significantly lower than the Snake River's natural historical lows (according to Figure 3-2 of the DEA) during the winter months. Further, based on current climate change projections, it is likely that lower winter flows will be more common, and the project's reduced flow rates would exacerbate these changes.

The proposed project includes potential impacts to Waters of the United States. Identify and describe any required Clean Water Act permit requirements associated with the proposed project. EPA recommends aligning the NEPA analysis with the Clean Water Act regulatory process as practicable. For example, if the proposed project includes a Clean Water Act Section 404 permit, the Clean Water Act Section 404(b)(1) guidelines require no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.¹ Specifically, actions should be taken to minimize adverse effects on populations of plants and animals by avoiding impacts to threatened and endangered species.² Therefore describing the environmental impact to listed threatened and endangered species and steps taken to minimize those impacts would benefit both the NEPA analysis and the permitting requirements.

Fisheries Impacts

EPA recommends the NEPA analysis evaluate impacts the project and change of flow may have migrating fish species. Where impacts are identified, EPA recommends including a description of steps taken to address these impacts. For example: use of fish screens at the canal inlets may minimize fish mortality from any entrainment in the canals and hydroelectric generators.

Air Quality

The project anticipates air quality impacts resulting from the construction and alternation of facilities due to construction vehicle emissions and fugitive dust. EPA recommends the NEPA analysis specify the mitigation measures that would be utilized for this project to lessen the severity of air quality impacts.

¹ 40 CFR § 230.10(d).

² 40 CFR § 230.75(c).

Greenhouse Gas Emissions

EPA recommends including an analysis of the project's impacts on greenhouse gas emissions. Include in the analysis the anticipated emissions from construction of the project, maintenance of the project, and any potential emissions such as methane and carbon dioxide that may result upstream of the project (E.G. resulting from anaerobic activity within the impounded areas).

Climate Change and Resiliency

In characterizing the affected environment and environmental consequences of the proposed project, EPA recommends that the NEPA analysis include:

- An assessment of the extent to which the proposed project is consistent with local, state, U.S. and global policy to limit GHG emissions.
- Identification of how climate resiliency has been considered in the Proposed Action and Alternatives.
- An assessment of the additive and synergistic impacts of climate change upon local natural resources, seasonal water patterns, and wildlife.
- An assessment that relates climate change to environmental justice and human health impacts.
- Existing and reasonably foreseeable environmental trends related to a changing regional and local climate; and
- Reasonably foreseeable effects that a currently changing climate will have on the proposed project and the project area, especially as it relates to instream flows.

Cumulative Impacts

When analyzing the project, EPA recommends determining what the cumulative impacts of each analyzed alternative will be on human health and the environment. Include in the analysis evaluating if the impacts of the proposed project will interact and potentially exacerbate the effects of other impacts within the project area, such as current irrigation withdrawals from the Snake River or other land use changes. This could include, but is not limited to, the timing of the work being coinciding with other human or natural disturbances that are affecting the project area (e.g. surrounding airshed/watershed).

Environmental Justice

Executive Order 12898 directs federal agencies to identify and address the disproportionately high and adverse human health effects of federal actions on minority and low-income populations, to the greatest extent practicable and permitted by law. EO 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* should also be incorporated into the NEPA analysis because it includes a modern definition of equity that clarifies a broader approach.

To identify potential EJ concerns, EPA recommends using two web-based screening tools: Environmental Justice Screening and Mapping (EJScreen, Version 2.1) Tool³ and Climate and Economic Justice Screening Tool.⁴ EPA considers a project to be in an area of potential EJ concern when an EJScreen analysis for the project area shows one or more of the twelve EJ Indices at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJ analysis consider the EJScreen. The CEJST can be used to assist Federal agencies in identifying and defining disadvantaged communities for the purposes of the Justice40 Initiative.⁵ With the CEJST, for example,

³ Accessible at: <https://www.epa.gov/ejscreen>, accessed 11/10/2022.

⁴ Accessible at: <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>, accessed 11/10/2022.

⁵ Accessible at: <https://www.whitehouse.gov/environmentaljustice/justice40/>, accessed 11/10/2022.

FERC could consider census tracts identified as ‘disadvantaged’ and determine disproportionate impacts by the project. EJScreen and CEJST are complementary tools.

It is important to consider all areas impacted by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.⁶ When assessing large geographic areas, consider the individual block groups within the project area in addition to an area-wide assessment. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.⁷ As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJScreen outputs. Further review or outreach may be necessary for the proposed action.

To address these potential concerns, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.⁸ The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.
- Characterizing project site(s) with specific information or data related to EJ concerns;⁹
- Describing potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation;
- Describing block groups that contain the proposed action and at a minimum, a one-mile radius around those areas;
- Describing individual block groups within the project area in addition to an area-wide assessment; and
- Supplementing data with county level reports, local and indigenous traditional ecological knowledge.

Financial Assurance

As local, regional, and national conditions fluctuate due to climate change, EPA suggests requiring financial assurance mechanisms in licenses and other authorizations for considerations such as project operation and maintenance, and adaptive management plans to address changing conditions that may affect operations.

Tribal Consultation

EPA encourages FERC to consult with Tribes and incorporate feedback from Tribes when making decisions regarding the project. EPA recommends the NEPA analysis describe the issues raised during the consultations and how those issues were addressed.

⁶ Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions” (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

⁷ Accessible at: <https://www.epa.gov/ejscreen/technical-documentation-ejscreen>, accessed 11/10/2022.

⁸ Accessible at: https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf, accessed 11/10/2022.

⁹ For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. Accessible at: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>, accessed 11/10/2022.